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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,765	01/25/2001	Meir Feder	14531.107.1.4	7763
7590	10/04/2004		EXAMINER	
RICK D. NYDEGGER WORKMAN NYDEGGER & SEELEY 1000 EAGLE GATE TOWER 60 EAST SOUTH TEMPLE SALT LAKE CITY, UT 84111			NALEVANKO, CHRISTOPHER R	
			ART UNIT	PAPER NUMBER
			2611	
			DATE MAILED: 10/04/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/770,765	FEDER ET AL.
	Examiner Christopher R Nalevanko	Art Unit 2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 18 May 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 30-35,37-39 and 43-49 is/are pending in the application.  
4a) Of the above claim(s) 22-29 and 40-42 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 30-35,37-39 and 43-49 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments with regards to the commonly assigned Ravi Patent (commonly assigned to Microsoft), are noted but do not conform with MPEP 706.02 (L)(2) II. Specifically, Applicant must state in a clear and conspicuous manner, that: "Application X and Patent A were, at the time the invention of Application X was made, owned by Company Z." Previous Office Action is sustained.
2. A supplemental Office Action is supplied below.
3. All of Applicant's further arguments are moot in light of the New Office Action below.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 37-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 37-39 depend upon canceled Claim 36. Further clarification is required.

\*\*\*The following art rejections are based upon the Examiners best understanding of the claimed limitations in light of the above 35 USC 112 2<sup>nd</sup> paragraph rejections.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 30-35, 37-39, and 43-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams (6,044,396) in further view of Ito et al (6,014,693).

Regarding Claim 30, Adams shows a method of bandwidth allocation for transmitting video on a cable network comprising providing a plurality of data sources (col. 2 lines 27-41, col. 4 lines 35-50), differentially converting the data sources into compressed video streams responsive to an instantaneous resource restriction (col. 5 lines 10-50, col. 7 lines 30-45), and multiplexing the compressed video streams on a single transmission line (col. 4 lines 35-50, see fig. 1 item 110, fig. 2). Adams fails to show differentially converting the data responsive to the content. Ito shows differentially converting the data based on the content, such as what frames are being transmitted and how much resolution in the data (fig. 3, col. 3 lines 25-31, col. 5 lines 50-67, col. 6 lines 1-40, col. 9 lines 10-30, multiple streams are created based upon the content in the server, different versions for different bit rates are created, streams the appropriate content accordingly). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention to modify Adams with ability to vary the data rate based on the data content as in Ito in order to provide the user's terminal with the most efficient amount of data.

Regarding Claim 31, Adams shows converting each stream into a different bit rate, but fails to specifically state that the bit rate is associated with the frame rate. Ito shows that a different number of frames are displayed (frame rate) based on what stream is sent (col. 9 lines 15-25).

Regarding Claim 32, Adams shows that the frame quality maybe increased depending on bandwidth availability (col. 2 lines 12-17).

Regarding Claim 33, Adams shows that the resource restriction comprises bandwidth restrictions (col. 5 lines 10-50, lines 64-67).

Regarding Claim 34, Adams fails to show that the resource restriction comprises a computing restriction. Ito shows using a computing resource restriction, or load placed on the network server (col. 3 lines 30-41, col. 4 lines 30-35, col. 6 lines 30-40, load on server).

Regarding Claim 35, Adams shows that the data sources comprise display commands, or instructions on how the data will be displayed (col. 1 lines 50-59, col. 2 lines 42-44 col. 4 lines 58-59). This 'application data' or 'auxiliary packets' are data that describe how the 'frame' of MPEG data is displayed. The data describing what frames are to be displayed or what bit rate to use are the display commands. The information tells the receiver how to create, or display, the image at the user site.

Regarding Claim 37, Ito shows that the data indicates whether an I or P frame is transmitted as well as the resolution or frame rate (number of frames extracted to be sent as a stream) (fig. 3, col. 5 lines 50-67, col. 6 lines 1-55, col. 9 lines 5-35, index with a variety of content information).

Regarding Claim 38, Adams shows that it is possible to analyze, based on the display commands, such as bit rate and application data, to determine the content of the data, such as a slow moving scene (col. 2 lines 12-17).

Regarding Claim 39, Adams shows that applications data, generated by software, indicates information about the content of the data (col. 1 lines 50-59, col. 2 lines 42-44 col. 4 lines 58-59).

Regarding Claim 43, Adams shows a method of bandwidth allocation for transmitting video on a cable network comprising providing a plurality of data sources (col. 2 lines 27-41, col. 4 lines 35-50), differentially converting the data sources into compressed video streams responsive to an instantaneous resource restriction (col. 5 lines 10-50, col. 7 lines 30-45), and multiplexing the compressed video streams on a single transmission line (col. 4 lines 35-50, see fig. 1 item 110, fig. 2). Adams fails to show that the resource restriction is a computing restriction. Ito shows using a computing resource restriction, or load placed on the network server (col. 3 lines 30-41, col. 4 lines 30-35, col. 6 lines 30-40, load on server). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention to modify Adams with ability to vary the data rate based on the computing restrictions as in Ito in order to provide the user's terminal with the most efficient amount of data.

Regarding Claim 44, Adams shows converting each stream into a different bit rate, but fails to specifically state that the bit rate is associated with the frame rate. Ito shows that a different number of frames are displayed (frame rate) based on what stream is sent (col. 9 lines 15-25).

Regarding Claim 45, Adams shows that the frame quality maybe increased depending on bandwidth availability (col. 2 lines 12-17).

Regarding Claim 46, Adams shows a method of bandwidth allocation for transmitting video on a cable network comprising providing a plurality of data sources (col. 2 lines 27-41, col. 4 lines 35-50), differentially converting the data sources into compressed video streams responsive to an instantaneous resource restriction (col. 5 lines 10-50, col. 7 lines 30-45), and multiplexing the compressed video streams on a single transmission line (col. 4 lines 35-50, see fig. 1 item 110, fig. 2). Adams shows converting each stream into a different bit rate, but fails to specifically state that the bit rate is associated with the frame rate. Ito shows that a different number of frames are displayed (frame rate) based on what stream is sent (col. 9 lines 15-25). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention to modify Adams with ability to change the frame rate as in Ito in order to provide the user's terminal with the most efficient amount of data.

Regarding Claim 47, Adams shows that the frame quality maybe increased depending on bandwidth availability (col. 2 lines 12-17).

Regarding Claim 48, Adams shows that the resource restriction comprises bandwidth restrictions (col. 5 lines 10-50, lines 64-67).

Regarding Claim 49, Adams fails to show that the resource restriction comprises a computing restriction. Ito shows using a computing resource restriction, or load placed on the network server (col. 3 lines 30-41, col. 4 lines 30-35, col. 6 lines 30-40, load on server).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R Nalevanko whose telephone number is 703-305-8093. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on 703-305-4755. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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